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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Third periodic reports of States parties due in 1989

Addendum

ROMANIA*

[30 July 1992]

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* For the initial report submitted by the Romanian Government, see CCPR/C/1/Add.33; for its consideration by the Committee, see the summary records CCPR/C/SR.135-SR.137, SR.140 and SR.141 and Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 40 (A/34/40), paras. 147-179. For the second periodic report submitted by the Romanian Government, see CCPR/C/32/Add.10; for its consideration by the Committee, see the summary records CCPR/C/SR.740 to SR.743, and Official Records of the General Assembly, Forty-second session, Supplement No. 40 (A/42/40), paras. 294-345.

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Introduction

1. The International Covenant on Civil and Political Rights, which came into force in 1976, was ratified by Romania in 1974. The initial report of Romania was presented in 1979 (CCPR/C/1/Add.33) and the second (CCPR/C/32/Add.10) was submitted to the Human Rights Committee in 1987.

2. In compliance with the provisions of article 40 (1) (3) of the Covenant and in accordance with the recommendation of the Human Rights Committee, the third periodic report should have been submitted in 1989. The delay in submission of the third report has been due to the fundamental changes that have taken place in Romanian society since December 1989, embracing the whole of the legislation and the machinery of State, both central and local, along with the transition to a market economy; nevertheless, some of these changes have still not yielded their full effect.

3. Although Romania has opted decisively for democracy and respect for human rights, some time has proved necessary for this option to be given expression in a new Constitution and a body of ordinary statutes. A report drawn up before the adoption of the Constitution and the other prescriptive acts of decisive importance in the sphere of human rights would not have been able to illustrate the present situation and the evolution of Romania in this sphere and provide an accurate reflection of reality. In order to provide as accurate and full a reflection of the current situation as is possible, and having regard to the fundamental changes that have taken place in the Romanian political and social landscape, this third report goes beyond the scope of a periodic report and adopts an entirely new approach in some respects.

I. GENERAL CONSIDERATIONS

4. Even if this report has to cover the period between 1987 and 1992, it deals mainly with the legislative changes since December 1989. For the period between 1987 and 1990, the Committee may refer in the legislative field to the initial report (CCPR/C/1/Add.33) and the second periodic report (CCPR/C/32/Add.10), since the changes during that period were not vital. This report refers to the former legislation only when comparison with the present situation has been deemed necessary. Likewise, as regards the practical application of the principles enunciated, and the practice of the courts and administrative bodies, it has been deemed appropriate to refer mainly to the period since December 1989. No stress has been laid on the previous period, given that the discrepancy between the stated principles and practical reality, and also the flagrant violations of human rights in that period were common knowledge and have been referred to on many occasions, both within and outside the country.

5. With regard to that part of the report concerned with the general information to be submitted in compliance with the unified directives on the first part of the reports that States parties are required to submit in pursuance of the various international instruments on human rights, including the Covenant (HRI/CORE/1, annex), members of the Committee are referred to the Romanian core document (HRI/CORE/1/Add.13).

6. Although the question of the relationship between national law and international regulations, including the Covenant on Civil and Political Rights, to which Romania is a party, is amply dealt with in that core document, it is appropriate to emphasize here that this problem was clearly resolved in a spirit of respect for human rights by the adoption of the new Romanian Constitution on 8 December 1991. According to article 11 of the Constitution, "The Romanian State pledges to fulfil, to the letter and in good faith, its commitments under the treaties to which it is a party" (para. 1) and "Treaties ratified by Parliament in accordance with the law shall form part of domestic law" (para. 2).

7. In accordance with article 20, "The provisions of the Constitution that relate to the rights and freedoms of the citizens shall be interpreted and applied in accordance with the Universal Declaration of Human Rights and with the Covenants and other treaties to which Romania is a party". Situations of conflict between national law and international law are resolved in a definitive manner by the second paragraph of article 20, which stipulates: "If there are discrepancies between the provisions of the conventions and treaties on fundamental human rights to which Romania is a party and domestic laws, the international regulations shall have primacy".

8. It may therefore be concluded from analysis of the articles cited that the International Covenant on Civil and Political Rights is incorporated in Romanian national law and its provisions prevail over any provision, present or future, of national law at variance with it.

II. INFORMATION ON ARTICLES 1 to 27 OF THE COVENANT

Article 1

Paragraph 1

9. This first paragraph provides that "All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development". In ratifying the Covenant (on 31 October 1974), the authorities of the Romanian communist regime recognized this right for every people, but they did not guarantee and ensure the exercise of the same right for the Romanian people. The rejection of political pluralism and the violation of the most elementary democratic rules enabled the decision-making authority to be concentrated in the hands of certain party leaders.

10. The fall of the communist dictatorship in December 1989 and the re-establishment of a multi-party system led to the holding of the first free elections in more than 50 years. The Parliament elected on 20 May 1990 also served as a Constituent Assembly. The Romanian Constitution was adopted by Parliament on 21 November 1991 and came into force on 8 December 1991 after approval by referendum.

11. In accordance with the first article of the Constitution, "Romania is a sovereign and independent, unitary and indivisible nation State", a "democratic and social State in which the rule of law prevails, and in which the rights and freedoms of citizens, the unfettered development of the human

personality, justice and political pluralism represent supreme values and are guaranteed". "The form of government of the Romanian State is the republic". Article 2 states that "National sovereignty belongs to the Romanian people, who exercise it through their representative bodies and through referendums". Lastly, these constitutional provisions "cannot be the subject of revision" (art. 148 (1)).

Paragraph 2

12. In accordance with the provisions of paragraph 2 of article 1 of the Covenant, the Romanian Constitution provides that "underground resources of any type, lines of communication, air space, water resources that can produce power or can be used in the public interest, beaches, territorial waters, the natural resources of the economic zone and the continental shelf, as well as other assets defined by law, are exclusively public property", and "are non-transferable". These forms of property "may be given to autonomous public corporations or institutions for management or they may be licensed or rented out" (Constitution, art. 135 (4) and (5)).

13. The Constitution defines the Romanian economy as a market economy and places the State under the obligation of ensuring, inter alia "free trade ...; the exploitation of natural resources in accordance with the national interest ...; creation of the necessary conditions for improving the quality of life" (art. 134 (4) and (2)). The right to a decent standard of living is embodied in the fundamental rights and freedoms of the second chapter, Part II of the Constitution; this right is guaranteed by the constitutional obligation of the State, which must take measures for economic development and social protection to ensure that citizens have a decent standard of living (art. 43).

14. Similarly, "The Romanian State pledges to fulfil, to the letter and in good faith, its commitments under the treaties to which it is a party", maintaining peaceful relations with other States on the basis of the principles and other generally accepted norms of international law (Constitution, arts. 10 and 11).

Paragraph 3

15. Romania recognizes the right of peoples to self-determination in accordance with the provisions of the United Nations Charter. Whereas failure to respect the principle of self-determination is ipso facto an absolute violation of the principles of international law and human rights, Romania rejects any attempt to occupy the territory of another sovereign State or to negate the right of other peoples to self-determination.

Article 2

Paragraph 1

16. Equality of rights is provided for by the Constitution in accordance with article 4 (2) , which stipulates that "Romania is the common and indivisible homeland of all its citizens, regardless of race, nationality, ethnic origin, language, religion, sex, opinion, political allegiance, wealth, or social origin" and article 16, which provides that "Citizens are equal before the law

and before public authorities, with no privileges and with no discrimination". The constitutions of the communist period also made provision for the equality of the rights of all citizens, but merely added "regardless of nationality, race, sex or religion". The former provisions had nothing to say regarding the prohibition of the other forms of discrimination referred to in the Covenant, concerned with political or other opinion, property, or social origin. In fact, the acceptance of a different political opinion and the possibility of acquiring property even by legal means were excluded.

Paragraph 2

17. The Romanian legislation adopted after 22 December 1989 is in line with the requirements formulated in article 2 of the Covenant and contains provisions that guarantee the rights recognized in part even by the former legislation, but which were, in practice, not applicable. Thus, several anti-democratic laws, and restrictions imposed by the communist regime on exercise of the right of association, freedom of expression, freedom of the press, freedom of assembly and demonstration, and the right to leave one's country and return to it have been abrogated.

Paragraph 3 (a)

18. Two important prescriptive acts were adopted in 1990 to ensure that any person whose rights or freedoms as recognized by the Covenant had been violated should have an effective remedy, notwithstanding that the violation had been committed by persons acting in an official capacity. In order to guarantee freedom of the person throughout criminal proceedings, it has been provided, to the advantage of persons subjected to a restrictive measure or to deprivation of liberty which they regard as illegal, that they shall have the, right to bring the matter before the competent judicial body (Code of Criminal Procedure, art. 5, amended and supplemented by Act No. 32 of 16 November 1990). In order to provide effective recourse for persons who consider themselves to have been injured by an administrative act or by the refusal of an administrative authority to deal with a petition concerning a legally recognized right, a procedure for administrative challenge has been set up enabling the Act to be annulled or the right claimed to be recognized through a court decision (Act No. 29 of 7 November 1990).

19. Similarly, the Constitution has provided for the right of a person injured by a public authority to bring the matter before a court (art. 48 (1)), as well as for the right of an arrested person to appeal about the legality of the warrant to the judge (art. 23 (4)).

20. The new text of article 5 of the Code of Criminal Procedure provides that where arrest has been decided upon by the procurator, it may be made subject to judicial review throughout the proceedings. It has thus been possible for this wording to be invoked even by persons arrested before 16 November 1990. That was the case for more than 20 accused persons arrested in June 1990 on a charge of having unlawfully entered the headquarters of Romanian television and causing damage to public property. Immediately after the adoption of Act No. 32, referred to above, the court revoked the detention measure and proceeded with the hearing with the accused at liberty.

Paragraph 3 (b)

21. This paragraph requires States parties to guarantee that the competent authority shall determine the rights of a person using the remedy of recourse and, likewise, to develop the potential legal recourse. It may be emphasized here that prior to the adoption of Act No. 32 of 1990, article 5 of the Code of Criminal Procedure did not make provision for legal review of the legality of an order for pre-trial detention or a prohibition on leaving the area (for a person under investigation). Not only is there express provision for this review but, in order to ensure that the procedure is handled expeditiously, the new law specifies that the file must be sent to the court within 24 hours and that the court must deal with the complaint on the same day and in the presence of the arrested person and his legal representative (art. 140[1], introduced into the Code of Criminal Procedure by Act No. 32/1990).

22. The Administrative Challenge Act (No. 29/1990) also specified the authorities competent to deal with petitions from persons whose rights had been injured by an administrative body. Thus it was that sections specializing in the system of administrative challenge were set up in departmental courts (which hear the main action), and in the Supreme Court (which is competent to hear the appeal against the decision of the departmental court).

23. The Constitution also guarantees free access to justice for any person for the defence of his rights, freedoms and legitimate interests. It is expressly provided that "No law can hamper the exercise of this right" (art. 21).

Paragraph 3 (c)

24. Guarantees that the competent authorities shall enforce any remedy that has been recognized as justified are provided in the Constitution and in the two Acts referred to above. The Constitution provides that: "The person detained or arrested shall be released if the grounds for these measures cease to exist" (art. 23 (6)). Similarly, Act No. 32 (1990), which deals directly with appeals against pre-trial measures taken by the procurator, stipulates: "Should the court consider the preventive measure taken to be illegal, it shall countermand the arrest and set the accused person or the defendant free or, depending on the case, revoke the order not to leave the locality" (art. 140[1], final paragraph, introduced into the Code of Criminal Procedure by Act No. 32/1990).

25. In the case of a justified action, the Administrative Litigation Act provides that the court shall annul the administrative act, in whole or in part or, depending on the case, shall oblige the authority to issue the certificate, attestation or any other document for recognition of the right claimed (Act No. 29/1990, art. 11).

26. The right of the injured person to damages is one of the guarantees that the competent authorities are going to give following complaints and applications made to them, considering all the consequences of violation of legally recognized rights and freedoms. The Constitution gives persons whose rights have been violated by a public authority the possibility of having the

act revoked and of receiving compensation for the damage suffered along with recognition of the right in question (art. 48 (1)). Consequently, in accordance with the Administrative Litigation Act, when the petition is accepted, "the court shall also pronounce on the material and moral damages claimed". Should the injured person not have requested reparation for the damage because the amount of the injury was not known at the time of the action for annulment, he may take up the matter subsequently through proceedings (Act No. 29/1990, arts. 11 and 12).

Article 3

27. The undertaking to ensure "the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant" is embodied in all Romanian legislation, the Constitution, the Family Code, the Civil Code and the Labour Code. The equal right, without privileges or discrimination, established by the Constitution (art. 16) clearly also applies to the equal right of men and women. All discrimination based on sex is rejected, along with all discrimination based on race, nationality, ethnic origin, language, religion, opinion, political allegiance, wealth, or social origin (art. 4 (2)).

28. No regulations concerning civil and political rights provide separate rules for application to women and men. On the contrary, we could cite the provision of article 38 (4) of the Constitution: "Women shall receive the same pay as men for equal work", as a concrete expression of the banning of all discrimination.

29. Practice confirms the equal access of women and men in the field of education and work - including access in relation to the number of women students in universities, the participation of women in public administration, legal bodies, education and scientific research. However, in relation to the earlier period, there has been a considerable reduction over the last two years in the presence of women in political life - both within political parties and groups and as regards candidates for general elections (1990) and local elections (1992). Consequently, there are few women in Parliament and even fewer in local councils. In the administration, there are some women who are Secretaries or Under-Secretaries of State, Deputy Prefects or Deputy Mayors.

30. This phenomenon may perhaps be explained as a general reaction against the former practice of the planned "propelling" of women into managerial positions through the setting of fixed percentages for vacancies for Deputies, Mayors, etc. to be occupied by women. Consequently, apart from the fact that these percentages no longer exist, there is currently some reluctance (on the part of men but also women) to support female candidates. That also emerges following the massive ridiculing and compromising of the women promoted by the old regime under the conditions of imposed and controlled egalitarianism. This is a temporary situation that will cease to exist as public life returns to normal and attitudes change.

Article 4

Paragraph 1

31. The former constitutional provisions of 1965 did not specifically regulate the exceptional situations in which a state of emergency could be declared and accorded the right to the President of the Republic to proclaim a "state of necessity in the event of an emergency", without conferring a right of review on the legislature. This provision was used by Nicolae Ceauşescu in December 1989, when he declared a state of necessity and ordered the armed repression of demonstrators.

32. The Constitution that came into force on 8 December 1991 also contains some detailed regulations which provide that "The exercise of certain rights or freedoms may be restricted only by law and only if this is necessary, according to the case, in order to: defend national security, public order, health or public morals, or the rights and freedoms of citizens; investigate a crime; prevent the consequences of a natural disaster or a particularly severe catastrophe" (art. 49).

33. The declaration of martial law or a state of emergency throughout the country or in certain localities is an exceptional measure. Although the adoption of such a measure is within the competence of the Romanian President, it is subject to approval by Parliament, which must be sought within five days of the declaration of martial law; "If Parliament is not in session, it shall be convened by law no later than 48 hours after the declaration of martial law or a state of emergency and shall remain in session throughout these periods" (art. 93).

Paragraph 2

34. In accordance with the provisions of this paragraph, limitation of the exercise of certain rights or certain freedoms under martial law or in a state of emergency "shall be in proportion to the situation which caused it and may not be prejudicial to the existence of justice or freedom" (Constitution, art. 49 (2)). Consequently, no derogations are admitted to the provisions of the Covenant set out in article 6 (right to life), article 7 (prohibition of torture), article 8 (1) (2) (prohibition of slavery and holding in servitude), article 15 (non-retroactivity of the criminal law), article 16 (recognition of everyone as a person before the law) and article 18 (freedom of thought, conscience and religion).

35. All the rights and freedoms guaranteed in the above-mentioned articles of the Covenant are provided for and protected in an appropriate manner both in the Constitution and in the ordinary criminal statutes and the statutes on criminal procedure, as emerges from the commentaries of this report on each of the articles concerned.

36. The articles of the Constitution that correspond to the above-mentioned articles of the Covenant do not admit of any possibility of derogation (art. 22 - right to life, physical and mental well-being and prohibition of torture; art. 29 - freedom of conscience and religion; art. 15 (2) -

the non-retroactive nature of the criminal law); the questions of slavery and of imprisonment for contractual obligations do not arise for Romania.

37. As regards the prohibition of derogation from article 7 of the Covenant, concerning torture, Act No. 20 of 9 October 1990 introduced a provision into the Penal Code in accordance with which: "no exceptional circumstance whatsoever, state of war or threat of war, internal political instability or any other exceptional state may be invoked in justification of torture; similarly, an order from a superior or from a public authority may not be invoked".

38. In order to avoid any derogation that could adversely affect the fundamental rights of citizens, even in exceptional circumstances, the Constitution provides strict limits regarding the possibility of its revision. Thus, article 148 (2) stipulates: "... No revision may be made if it results in the elimination of the basic rights and freedoms of citizens or of the guarantees of those freedoms and rights" and article 148 (3) stipulates: "The Constitution may not be revised during periods of martial law or a state of emergency or in time of war".

Article 5

Paragraph 1

39. Guarantees in the sense of this paragraph are to be found in several of the provisions of the Constitution adopted in 1991. In proclaiming that "National sovereignty belongs to the Romanian people, who exercise it through their representative bodies and through referendums", the Constitution expressly prohibits any derogation, with the clarification that: "No group or individual may exercise sovereignty on his own behalf" (art. 2).

40. "Parliament is the highest representative body of the Romanian people and the sole legislative authority in the country" (art. 58 (1)). The Constitution clearly defines the object of the constitutional laws and of statutory and ordinary laws (art. 72). On referral, the Constitutional Court will pronounce on the constitutionality of laws (art. 144).

41. The limits on the revision of the Constitution by constitutional laws are set out in Part VI, which lays down both the conditions under which revision may take place and the revision procedure. Those basic provisions of the Constitution that may not be the subject of revision are enumerated.

42. The fundamental rights and freedoms of citizens are supreme values and are guaranteed by the Constitution (art. 1). The universality of the rights and freedoms of citizens is based on their equality "before the law and before public authorities, with no privileges and with no discrimination" (art. 16 (1)). "No one is above the law" (art. 16 (2)).

43. The protective measures taken by the State to preserve, develop and express the identity of persons belonging to the national minorities must conform to the principles of equality and non-discrimination in relation to persons belonging to other national minorities and, in general, in relation to all other Romanian citizens (art. 6 (2)). Romanian citizens, foreigners and

stateless persons present in the territory of Romania must exercise their rights and freedoms "in good faith, without violating the rights and freedoms of others" (art. 54).

Paragraph 2

44. Where Romania is concerned, the hypothesis covered by this paragraph must be excluded, given that the Constitution provides that "Treaties ratified by Parliament, according to the law, are part of domestic law" (art. 11 (2)), which places them on the same level as domestic law. Consequently, treaties and national acts are implemented, for as long as they remain in force, integrally and in a complementary manner in accordance with the principle of the law most favourable to the citizen.

45. The constitutional provision that "If there are discrepancies between the provisions of the conventions and treaties on fundamental human rights to which Romania is a party and domestic laws, the international regulations shall have primacy" (art. 20 (2)) envisages the opposite hypothesis and expresses the willingness of the legislature to ensure that national practice conforms to international practice. That fact emerges from the first paragraph of the same article, which stipulates: "The provisions of the Constitution that relate to the rights and freedoms of the citizens shall be interpreted and applied in accordance with the Universal Declaration of Human Rights and with the Covenants and other treaties to which Romania is a party" (art. 20 (1)). The ground for this provision arises from the fact that previously in Romania, especially in the sphere of human rights, legislation and jurisprudence were below the level of international requirements and regulations. All the same, these regulations are conceived as a minimum standard, and it is open to legislation to provide more extensive rights and freedoms; moreover, the provisions of the new Constitution testify to that.

Article 6

Paragraph 1

46. The right to life, acknowledged as being the inherent right of every human being, is protected by the Constitution (art. 22 (1)). Likewise, Romanian penal law punishes offences against life, committed intentionally or through negligence, in proportion to their seriousness.

47. Decree-Law No. 6 of 7 January 1990 abolished the death penalty, which was previously laid down in the Penal Code for particularly serious offences, and substituted life imprisonment. To ensure that this measure was irreversible, the Parliament elected on 20 May 1990 passed Act No. 7/1991 on the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the Abolition of the Death Penalty. To settle the problem once and for all the Constitution provides that "The death penalty is prohibited" (art. 22 (3)). This provision of the Constitution represents the guarantee of a fundamental human right and for that reason it cannot be revised (under the provisions of art. 148 (2) analysed above in para. 38 of this report).

Paragraphs 2 and 3

48. Up till 6 January 1990 the death penalty was laid down in the Penal Code for:

(a) Offences against State security (arts. 155-167);

(b) Particularly heinous murders (art. 176);

(c) Offences against public property with very serious consequences (arts. 223-226 and 231); and

(d) Offences against peace and humanity (arts. 357 and 358), including genocide.

In general, these provisions were not contrary to the provisions of the Covenant, except in the case of sabotage (art. 164) and propaganda against the socialist system (art. 166, para. 2), which are included in the chapter entitled "Offences against State security" and which concerned in particular persons hostile to the regime because of their known opinions or merely because of what their opinions were suspected of being. It was, moreover, for that reason that the two texts were repealed by Decree No. 10 of 12 January 1990.

49. Obviously, the death penalty for offences such as theft, embezzlement, fraud against public property or other offences of that type was unusual. However, it was laid down only for offences whose consequences were extremely serious (from the economic point of view) and was rarely applied, since the Penal Code also provided, in specified cases, for alternative sentences ranging from 15 to 20 years' imprisonment.

50. As required by article 6 of the Covenant, the provisions of the Penal Code were not contrary to the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide, nor are the provisions of present Romanian legislation. The Penal Code still includes a penalty for genocide, but it is no longer the death penalty for it has been replaced by life imprisonment.

51. After Romania had acceded in 1950 to the Convention on the Prevention and Punishment of the Crime of Genocide, genocide was introduced in 1960 as an offence in the Penal Code through article 357, which laid down the death penalty for it. This provision has been applied since then in two cases. These were the crimes committed against the Romanian people by Nicolae Ceauşescu and Elena Ceauşescu, who were sentenced and executed on 25 December 1989. This sentence has been the subject of numerous discussions both in the press and among experts in jurisprudence, particularly in regard to the question of the final nature of the sentence - a stipulation referred to expressly in article 6 (2) of the Covenant. However, the question of whether a sentence is or is not of a final nature before the legal time-limit for appeal has gone by in a case where the defendant waives the right to appeal is still controversial.

52. The right to life is thus protected by the Romanian Constitution and Romanian penal law. Unfortunately, the legal provisions, although well drafted, are not sufficient in themselves to ensure total protection of the right to life. It is therefore necessary to supplement the basic legal provisions by effective preventive measures and programmes in order to reduce the number of criminal acts that lead each year to the loss of numerous human lives. Thus, during 1990 1,734 persons were accused of deliberate offences against life (homicide and others), 869 of them for offences actually committed (therefore not merely attempted offences); as a result of these offences 869 persons lost their lives. During 1991, 1,974 persons were accused, 917 of them for offences actually committed, and 917 persons lost their lives as a result of the offences.

Paragraphs 4, 5 and 6

53. The provisions in these paragraphs concern States in which the death penalty has not been abolished, where for its application certain legal rules and traditions must be respected. In view of the fact that this report refers also to a period before the abolition of the death penalty, it must be noted that the legislation in force at the time provided that the condemned person had the right to seek pardon or the commutation of the sentence. The same applied to the prohibition on imposing the death sentence on persons aged under 18 years and on carrying out the death sentence on pregnant women.

Article 7

54. As to article 7 of the Covenant, under which "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment", up to November 1990 Romanian penal law regarded as crimes (offences preventing justice) being done:

(a) "The ill-treatment of a person under detention or serving a custodial or educational sentence", an offence covered by and punished under article 267 of the Penal Code with a sentence ranging from six months' to three years' imprisonment.

(b) "Investigation involving the wrongful use of promises, threats or violence against the person under investigation or under trial in order to obtain statements" (punished by one to five years' imprisonment under art. 266 (2) of the Penal Code). The previous laws contain nothing concerning the possible infliction of pain or suffering through torture, since punishment by the law of such offences would have meant recognizing the possibility that they had occurred, which of course was not at all suitable from a propaganda point of view.

55. It was for the same reasons that the former regime ignored the Convention on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was adopted on 10 December 1984 in New York. Romania acceded to that Convention under Act No. 19 of 9 October 1990. However, under Act No. 20 of 9 October 1990, which amended and supplemented certain provisions of the Penal Code and the Code of Criminal Procedure, torture was introduced expressly into domestic law as an offence and, depending on the seriousness of its consequences, the law prescribed for the offender a sentence of

imprisonment for 2 to 10 years and if the victim died, a sentence of life imprisonment or one ranging from 10 to 20 years' imprisonment. The attempted offence was also punished.

56. The offence of torture was defined as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by, or at the instigation of, or with the consent or acquiescence, of a public official or other person acting in a official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions (Penal Code, art. 267[1] (1)). This definition repeats in its entirety the definition given in the Convention against Torture.

57. The same law introduced into the Romanian Penal Code the prohibition envisaged in article 4 (2) of the Covenant by expressly stipulating that "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. An order from a superior officer or a public authority may not be invoked as a justification of torture" (Penal Code, art. 267[1] (5)).

58. As concerns the provisions of article 7 of the Covenant, it may be pointed out that the Romanian Penal Code (under the heading "Offences against peace and humanity") classified as a criminal offence "subjection to inhuman treatment of wounded, sick or shipwrecked persons, prisoners of war, or generally any other persons under the authority of the adversary or their subjection to medical or scientific experiments not justified by medical treatment in their interest" (art. 358).

59. So far as the final part of article 7 of the Covenant is concerned, it should be noted that no victims of such experiments have brought them to the notice of the judicial authorities. The allegations published in the press concerning the experimental administration of unauthorized medicaments to HIV-infected children have not been confirmed.

60. As for prosecution for offences of subjection to ill-treatment or wrongful methods of investigation (referred to above), it must be noted that trials of this type were avoided by the former regime. After the Revolution an attempt to use these legal provisions, in particular to punish notorious abuses which could have been proved, came up against an amnesty decree signed by Nicolae Ceauşescu in 1988. As concerns acts committed after that amnesty law up till the Revolution or even after the Revolution, there have been some complaints addressed both to Romanian authorities and to international associations (Amnesty International, Helsinki Committee). The inquiries carried out by the government procurator's office have not so far led to any charges. Some of the allegations have not been confirmed and in other cases investigations are still in progress.

61. In order to guarantee the right of human beings to physical and mental integrity and to the protection of their lives and dignity, the prohibition laid down in article 7 of the Covenant has been embodied in the Constitution "No one may be subjected to torture or cruel, inhuman or degrading treatment or punishment" (art. 22 (2)). This constitutional guarantee of certain fundamental human rights cannot be subjected to any revision (art. 148 (2)).

62. In April/May 1992, during the session of the Committee against Torture, Romania submitted its first report as a State party to the 1984 Convention (CAT/C/16/Add.1). On that occasion the legislative measures and the efforts undertaken by the new Romanian authorities to eliminate all acts of this nature were extensively described (see the report of the Committee against Torture, A/47/44, paras. 339-364).

Article 8

Paragraphs 1 and 2

63. Romanian legislation on the whole abides by the provisions of article 8 of the Covenant (paras. 1 and 2) regarding slavery and servitude, as well as the restrictions on the interpretation of forced or compulsory labour. The law punishes by 3 to 10 years' imprisonment "the subjection or maintenance of a person in a state of slavery and the slave trade" (Penal Code, art. 190).

Paragraph 3

64. In comparison with the former Constitution the new Constitution adopted in 1991 more explicitly and categorically stipulates the prohibition of forced labour and describes the situations in which labour is not considered as forced. A quotation from the text of article 39 of the Romanian Constitution is relevant:

> "(1) Forced labour shall be prohibited.
>
> (2) The following shall not be considered as forced labour:
>
> (a) Any service of a military character performed in lieu of military service by conscientious objectors;
>
> (b) Any work required normally of a person in prison or during his conditional release;
>
> (c) Any service required in the case of disasters or any other danger or any service arising under normal civil obligations laid down by the law".

The result is that the Romanian Constitution recapitulates in their entirety the provisions of article 8, paragraph 3 (c) of the Covenant. However, a difference can be seen between the end of the article quoted concerning the "services" that form part of normal civil obligations "laid down by the law" and the much wider formula used in the Covenant, which includes in the category of services not considered as forced or compulsory labour "any work or service which forms part of normal civil obligations". In our opinion, the

difference is not fortuitous but can be explained by what was experienced under the communist regime, when "any work or service" carried out during the weekend or outside normal working hours was considered to be a "normal" civil obligation and, as such, compulsory.

Article 9

Paragraph 1

65. In accordance with everyone's right to liberty and security of person laid down in article 9, paragraph 1, of the Covenant, "No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law". In this connection, the Constitution of 21 August 1965 stipulated that "No one may be detained or arrested unless there is serious proof or evidence that he has committed an act covered and punished by the law". The Romanian Penal Code lays down penalties for the offence of "illegal detention or arrest" (art. 266).

66. In practice, neither the provisions of the Constitution nor those of the Penal Code prevented the authorities under the communist regime from carrying out such illegal detention or arrest or from charging and sentencing people for political offences or for various criminal acts which they had not committed. Consequently, one of the first legislative measures adopted after December 1989 was a general amnesty for all the political offences envisaged in the Penal Code and the special laws committed after 30 December 1947, the date of the proclamation of the Romanian People's Republic. This measure was embodied in Decree-Law No. 3 of 4 January 1990 on amnesty and pardon.

67. In the same way, in accordance with the principles of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Romania acceded through Decree-Law No. 111 of 30 March 1990 to the International Convention against the Taking of Hostages adopted in New York on 17 December 1979. Accession to this Convention was immediately followed by Decree-Law No. 112 of 30 March 1990, under the terms of which the penalty laid down for the offence of deprivation of liberty - imprisonment ranging from three months to two years or a fine - was increased to imprisonment ranging from six months to three years. In addition, the penalty initially laid down by the Penal Code for having committed the offence while pretending to official status, for kidnapping carried out by one armed person or two or several persons together, and equally in cases where in exchange for release a ransom or any other advantage was demanded, where the victim was a minor and had been caused suffering or had his health or life put in danger, was increased and now amounts to between two and seven years' imprisonment (Penal Code, art. 189). At the same time, new subparagraphs were introduced in the text of this article calling for:

(a) A penalty of 5 to 15 years' imprisonment if in exchange for release a demand was made of the State or of a national or international organization or a group of persons to carry out or refrain from carrying out a certain act;

(b) A penalty of 10 to 20 years' imprisonment if the act led to the death of the victim;

(c) Punishment for attempts to carry out the act;

(d) Punishment for the production or acquisition of means or for the taking of measures to attempt to commit the offence.

68. The modifications and new provisions introduced into the Code of Criminal Procedure by Act No. 32 of 16 November 1990 are significant as showing the orientation and content of the legislative measures adopted after December 1989. Thus article 5 (2), in its new wording, guarantees liberty of the person throughout criminal proceedings: "No one may be detained or arrested or subjected to any form of restriction of liberty except in the cases and according to the conditions laid down by the law". At the same time, the lawfulness of pre-trial arrest and restriction of liberty ordered by the procurator has been made subject to judicial review, the person concerned being entitled to bring the matter immediately before the courts (art. 5, para. 3) and to obtain compensation in cases where the courts find that the measure taken was unlawful (art. 5, para. 4). Regulations have also been introduced regarding provisional release under court supervision or on bail (art. 5, para. 5).

69. In Romania individual liberty and security of the person are now inviolable rights embodied in the Constitution (art. 23, (1)). To guarantee them, the Constitution provides that searches, detention or arrest may only be carried out "in the cases and according to the procedure laid down by the law (art. 23 (2)) and that the duration of pre-trial detention must not exceed 24 hours (art. 23 (4)). This last provision adds: "the person arrested may take proceedings before a court regarding the lawfulness of the arrest warrant and the court shall be obliged to hand down a judgement and set forth the reasons therefor. It is for the courts alone to decide whether the state of arrest may be continued.

70. One may wonder in regard to these detailed regulations why the legislature, which only a year earlier had adopted them in Act No. 32 of 16 November 1990, considered it necessary to introduce such details into the Constitution. The reason is not merely a wish to furnish constitutional guarantees for the right of individual liberty but also the fact that in this way these regulations can no longer be revised in any fashion. Under article 148 (2) of the Constitution, "No revision may be made if it results in the suppression of the fundamental rights of citizens or the guarantees of those rights". Consequently, in future the maximum duration of detention or arrest may be reduced below the present limit but may not be increased in any way.

Paragraph 2

71. The provisions in this paragraph were inserted in the Romanian Code of Criminal Procedure by the same Act No. 32/1990 and now constitute paragraph 3 of article 6 of that Code. It is significant that they have not been set forth in the form of a right appertaining to the person but in a more binding manner as a categorical duty of the judicial authorities, who "shall be obliged to bring to the knowledge of the accused the act of which he is accused and the criminal classification of that act and to provide him with facilities for preparing and carrying out his defence". In an explicit

reference to a detained or arrested person, the Constitution stipulates that he shall be informed promptly in a language he understands of the reasons for his detention or arrest. As to the charges, the Constitution adds that they should be brought to the knowledge of the person concerned "in the shortest possible time" and "solely in the presence of counsel of his own choosing or appointed by the court (art. 23 (5)).

Paragraph 3

72. Arrest was not considered to be the rule in the system of the Code of Criminal Procedure, even in the version preceding Act No. 32/1990. It had been envisaged solely as a possibility applicable in certain situations listed in the Code. However, cases have very rarely occurred in which under the circumstances laid down by the law the accused has been investigated and left at liberty during the proceedings. Since the Revolution, or more precisely since the entry into force of Act No. 32 of 17 November 1990, the judicial authorities have ordered the release of certain arrested persons, considering that it was possible and preferable that they should be investigated and tried while still at liberty.

73. Recently it has also been stipulated in the law that the accused may be provisionally released under court supervision or on bail throughout the criminal proceedings (art. 160[1]-160[6], introduced into the Code of Criminal Procedure under Act No. 32/1990). As for the requirement that persons arrested be tried within a reasonable time, in practice real difficulties are encountered. These are brought about by various factors, particularly the inadequate technical equipment and inadequate numbers of police concerned with criminal investigations and the small number of magistrates (procurators and judges) and even lawyers. Taking into account the fact that not all magistrates and lawyers engage in activities concerned with criminal justice, and bearing in mind also specific events which since December 1989 have increased their tasks (quite apart from those connected with the increase in ordinary offences), it follows that the number of persons concerned with administering criminal justice is quite insufficient. This state of affairs must be improved in order to ensure the efficient settlement of criminal cases and particularly those in which the persons charged have been arrested.

Paragraph 4

74. The requirement set forth in the Covenant that "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention ..." is embodied in present Romanian legislation. Under article 140[1] introduced into the Code of Criminal Procedure by Act No. 32/1990, a person may take proceedings immediately before a court against an order for pre-trial custody. The complaint and the file must be handed over to the court within 24 hours. The court will then hand down a decision on the same day and order the complainant's release from arrest in the same judgement if it is considered to be unlawful. The right of an arrested person to lodge a complaint before the courts and the obligation laid on the courts to hand down a judgement on the lawfulness of the arrest warrant in a decision citing the reasons for the judgement are also set forth in the Romanian Constitution (art. 23 (4)).

Paragraph 5

75. As to the right to compensation of anyone who is unlawfully arrested or detained, mention must first be made of Decree-Law No. 118, adopted at the beginning of 1990, envisaging the award of damages to persons persecuted for political reasons under the dictatorship established on 6 March 1945, through illegal conviction, detention without trial, deportation, prohibition on leaving certain localities or internment in psychiatric hospitals.

76. Up till 1990 the Code of Criminal Procedure (art. 504) recognized the right to damages of a convicted person if it was found later by final decision that the person had not committed the alleged act or that the act had not been committed. This right was also acknowledged for an arrested person who was later released from criminal proceedings or acquitted by reason of one of the two circumstances mentioned above (as not being the perpetrator of the alleged act or the act not having been committed). Act No. 32 of 16 November 1990 extended this right to compensation under the same conditions to a person who had been the subject of some other pre-trial measure resulting in restriction of his liberty. The Penal Code was amended to that effect (art. 504, para. 2).

77. The Constitution guarantees the right of a person wronged by a public authority to compensation for the damage suffered. It also stipulates that the State must bear vicarious liability, in accordance with the law, for damage resulting from judicial errors committed in criminal cases (art. 48). The expression "in accordance with the law" refers to the provisions of the Code of Criminal Procedure and more precisely to article 504, which was the subject of the previous paragraph. The first decision of the courts handed down after the entry into force of Act No. 32 of 16 November 1990 came from a court in Bucharest in the case of Nica Leon, head of the Free Democrat Party. He had been arrested during the events of June 1990 and released after three months' detention. In view of the fact that the dismissal of the case had been founded on the fact that the accused had not committed the offence of which he was suspected, the court admitted his demand for compensation and awarded him damages of 500,000 lei.

Article 10

Paragraph 1

78. No provision to such an effect had been introduced into Romanian legislation, although the authorities had committed themselves to doing so by ratifying the Covenant in 1974. It was not until after the Revolution that the following requirement (art. 5') was introduced into the Code of Criminal Procedure under Act No. 32 of 17 November 1990:

> "All persons undergoing criminal proceedings or judgement shall be treated with the respect due to human dignity. Any act of torture or cruel, inhuman or degrading treatment shall be punishable by law."

The wording of the first part of the above-cited article shows that a broader content is given to the right of the individual and, implicitly, to the obligation of the authorities than the requirement set forth in the Covenant

(which specifies only persons deprived of their liberty). Specifically, the article of the Penal Code is applicable to every phase of the investigation - for example, the search or the actual arrest of the person against whom a warrant has been issued - but also concerns all persons who are subjected to an investigation while at large and are summoned to the premises of the investigating body to record their statements. A comparison between the two texts shows that the provision in the Covenant was considered as a minimum standard by the Romanian legislature, which in several cases stipulated far broader rights for the persons concerned.

Paragraph 2

79. The legislation and regulations in force provide for segregation of persons in police custody from those already sentenced, and also for segregation of juveniles in police custody from adults in the same situation. The Code of Criminal Procedure stipulates in this connection that: "During detention and when under arrest, minors shall be kept segregated from adults and women from men" (art. 142).

80. With the aim of improving the prison system, enhancing the effectiveness of custodial sentences and promoting the social rehabilitation of those serving them, overall responsibility for prisons was transferred on 15 January 1991 from the Ministry of the Interior to the Ministry of Justice. Drafts have been prepared of a number of laws concerning the conditions in which sentences are served and the operation of the prisons in line with the minimum standards recognized at the international level.

Article 11

81. Romanian legislation excludes the possibility of anyone being imprisoned "on the sole ground of inability to fulfil a contractual obligation". In such a case, the law affords the creditor the right of legal action to demand the payment of penalties for late fulfilment or non-fulfilment of the contract and also compensation for damage sustained owing to non-performance of a service or to failure to pay by the agreed date.

Article 12

Paragraph 1

82. The rights of the individual to enjoy freedom of movement and free choice of residence, to leave any country, including his own, and not to be arbitrarily deprived of the right to return to his country, were not specified in the 1965 Constitution or in other laws dating from the years of communist dictatorship. On the contrary, law and practice imposed many restrictions on the pretext of protecting national security and upholding the political order.

83. With the very first legislative instrument adopted in Romania after the Revolution, the right of the individual to freedom of movement and the right to free choice of residence were guaranteed. Thus Decree-Law No. 1 of 26 December 1990 abrogated:

(a) The restrictions, introduced in 1976, on the taking up of residence in the capital and the country's other major towns;

(b) The requirement for certain categories of person (e.g. farmers, teachers and physicians) to establish their domicile in the locality where they worked or the one they were assigned to after their university studies.

Paragraph 2

84. In accordance with the provisions of paragraph 2 concerning the right of the individual to leave his own country, this right was addressed in Decree-Law No. 10 of 8 January 1990, which established new regulations concerning passports and foreign travel guaranteeing every Romanian citizen, irrespective of race, nationality, sex, language, religion, political opinion or occupation, the right to travel freely abroad. Accordingly, Decree-Law No. 45 of 1 February 1990 rescinded the provisions (of Decree No. 678 of 7 October 1969 concerning measures for protection of the State frontier and Decree No. 400 of 2 November 1982 concerning control of passage across that frontier) which limit the right of the individual to freedom of movement.

85. The offence referred to in article 253 of the Penal Code and defined as "when a Romanian citizen entrusted with an assignment on behalf of the State or in the public interest refuses, on completion of that assignment, to return to the country" has been abolished by Decree-Law No. 9 of 31 December 1989. This same decree also rescinded the requirement that those who leave the country should pay the State the equivalent of the expense incurred by it for their education. This obligation, laid down in 1982, had provoked sharp criticism in the international press.

86. In accordance with article 15 of the Universal Declaration of Human Rights, recognizing the right of every individual to change his nationality, and of article 12, paragraph 2 of the Covenant, Romanian legislation provides for the possibility of renouncing Romanian citizenship.

Paragraph 3

87. As regards the commitment provided for in this paragraph, it should be stressed that the new regulations already mentioned ensure that the right of Romanian citizens to freedom of movement, whether in Romania or abroad, is no longer subject to wrongful and absurd restrictions. The only limitations conceivable are those provided for by the law to protect national security, public order, and public health and morals. Also the criminal investigation body can, by order, prohibit the accused or charged person from leaving the locality during a certain lapse of time.

88. With regard to this paragraph, it must be mentioned that Decree-Law No. 7 of 31 December 1989 guarantees the right to repatriation of Romanian citizens who are abroad and also of former nationals, who can reacquire Romanian citizenship on request. Repatriated persons who possess or have reacquired Romanian citizenship enjoy all the political, economic and social rights accorded by law to Romanian citizens (Decree-Law No. 7/1989, art. 4). Pursuant to the principle laid down by this provision, Decree-Law No. 35 of

19 January 1990 recognized the equal rights of repatriated persons and other Romanian citizens in regard to salaries, seniority acquired by uninterrupted service, and conditions of retirement.

89. Decree-Law No. 137 of 21 May 1990, establishing certain provisions concerning Romanian citizenship, also laid down rules governing the situation of former citizens wishing to reacquire Romanian citizenship but without taking up residence in Romania, thus providing a further guarantee of the right to freedom of movement. Under this enactment, former citizens who for various reasons, prior to 22 December 1989, had lost their Romanian citizenship can reacquire it on request even if they already have another citizenship and do not take up residence in Romania. On reacquiring Romanian citizenship, they accordingly possess the right to obtain on request Romanian passports allowing them to travel in any country and return to Romania. Those who for various reasons do not possess such a passport can nevertheless enter Romania with the travel document issued on request by the Romanian diplomatic mission or consular office in their country of domicile. Thirdly and lastly, those who possess a passport issued by another country must, to enter Romania, obtain some kind of visa - diplomatic, official, temporary stay, tourist or transit - granted by the authorities specified in Romanian law (Decree-Law No. 10 of 8 January 1990). This does not apply to persons possessing passports issued by States with which Romania has concluded bilateral agreements for the abolition of visas.

90. The Constitution of 1991 stipulates that "the right to freedom of movement, in the country and abroad, is guaranteed. Every citizen is ensured the right to establish his domicile or residence in any locality in the country, to emigrate and to return to the country" (art. 25).

91. The conditions for, respectively, obtaining on request and renouncing Romanian citizenship are set out in detail in the Romanian Citizenship Act passed in 1991 (Act No. 28 of 1 March 1991).

92. During the period from 1 January 1990 to 1 March 1992, 6,823,057 passports for travel abroad were issued, representing an approximately sevenfold annual increase over the average for preceding years. Accordingly, over the same period, the number of trips abroad taken by Romanian citizens was over 20 million, or about 25 times the average for prior years.

93. Favourable action was taken on the applications submitted by 160,782 persons wishing to take up residence abroad and approval was granted to the requests of 26,337 Romanian citizens who were abroad and asked for their domiciles to be established in various countries. During the same period, over 6,200 applications from former citizens for repatriation were approved.

Article 13

94. In accordance with article 13 of the Covenant, Romanian legislation stipulates that an alien lawfully in Romanian territory may be expelled therefrom only in pursuance of a decision reached according to law. Thus, under the Penal Code (art. 117), an alien who has committed an offence can be

refused the right to remain in Romanian territory. If the expulsion is ordered in association with a prison sentence, it shall take place after the sentence has been served.

95. Article 117 of the Penal Code has been supplemented following Romania's accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Thus Act No. 20 of 29 October 1990 provides that citizens of other States or stateless persons "may not be expelled if there are serious reasons for believing that they would be in danger of being tortured in the State to which they would be sent". It is for the courts to decide on the expulsion or extradition of aliens and stateless persons (Constitution, art. 19). This allows the person concerned to present the arguments against his expulsion and ensures impartial consideration of the case.

Article 14

Paragraph 1

96. The equality of all persons before the judicial authorities is guaranteed by the Constitution (art. 16). The Constitution also provides that, in administering justice, judges are "independent and subject only to the law" (art. 123). According to article 21 of the Constitution, "any person may apply to the courts for the defence of his rights, liberties and legitimate interests" (para. 1) and "no law may limit the exercise of this right" (para. 2).

97. The Act concerning the organization of judicial bodies and the codes of criminal and civil procedures determine the material and territorial competence of judicial bodies and guarantee equitable and public examination of all disputes. Secrecy is provided for by the law for certain court sessions as an exception to the principle of public trial. The judicial authority may decide at the request of the procurator or the parties, or ex officio, that the proceedings shall take place, partly or wholly, in camera. The decision on this question is taken in public session, after the parties present have been heard. During the proceedings in camera, no one is admitted to the courtroom except the parties, their representatives, their counsel and the other persons called by the court for the requirements of the case. Proceedings in camera represent an exceptional measure and are warranted only if there exists one of the reasons limitatively enumerated in the Code of Criminal Procedure, and in particular if admission of the public would be detrimental to certain State interests, to morality, or to a person's dignity or private life (Code of Criminal Procedure, art. 290). Judgement must always be delivered in public session (Code of Criminal Procedure, arts. 290 and 390; Code of Civil Procedure, art. 121).

98. Concern for the right of every person to be tried fairly, by a competent, independent and impartial court, is illustrated in particular by the way in which some trials, unprecedented in the practice of years prior to 1990, have been conducted. A case in point is the trial of Steţca Toader, Mayor of the Commune of Sapînta (Maramures region), who was indicted on a charge of insulting behaviour towards the deputy chief of the local police. To ensure an impartial trial, the Supreme Court decided that the proceedings should take

place in another department. At the request of the accused, who was under arrest, the Court thus entrusted with the case decided to free him. The prosecution appealed against this decision, but its appeal was dismissed and the accused was tried on bail. After two months, on the conclusion of the trial, the accused was sentenced to imprisonment. The verdict was overturned by the appeal court. Its decision was based inter alia on the consideration that the first verdict "did not take account of the presumption of innocence". The decision evoked favourable responses in public opinion.

Paragraph 2

99. The presumption of innocence is guaranteed by the Constitution, which states: "Until the judicial sentence becomes final, every person shall be presumed innocent (art. 23 (8)). The presumption of innocence is one of the fundamental provisions of the Code of Penal Procedure, which stipulates: "the person accused or charged is not required to prove his innocence. If evidence of guilt is presented, he has the right to prove that it is unfounded" (art. 66).

Paragraph 3

100. The guarantees enumerated in article 14, paragraph 3, are provided for in the Code of Criminal Procedure, so that any person accused of an offence may:

(a) Be informed promptly of the nature and cause of the charge against him;

(b) Have adequate time and facilities for the preparation of his defence and communicate with counsel of his own choosing (ibid, paras. 4 and 5);

(c) Be tried without undue delay (arts. 158 and 159);

(d) Be present at his trial and defend himself in person, through legal assistance of his own choosing, or through legal assistance assigned to him, in accordance with the legal provisions (arts. 6 and 172);

(e) Examine the witnesses against him and obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him (arts. 327, 72 and 88);

(f) Have the assistance of an interpreter if he cannot understand or speak the language used in court (art. 128);

(g) Not be compelled to testify against himself or to confess guilt (arts. 68 and 69).

101. As regards the right to defence it must be mentioned that, by Decree-Law No. 90 of 1 March 1990, the bar has become an independent body and no longer comes under the Ministry of Justice. Act No. 32 of 16 November 1990 introduced into the Code of Criminal Procedure a new provision establishing

the right of the accused or indicted person to have legal assistance from the start of the criminal procedure, and the responsibility of the judiciary for informing him of this right (art. 171, para. 1).

102. Act No. 32 of 16 November 1990 also added to the categories of person for whom legal assistance is mandatory, namely: minors, recruits, called-up reservists, students at certain military training institutions, inmates of special re-education establishments and persons under arrest, even in connection with another case (Code of Criminal Procedure, art. 171, para. 2). The same Act also supplemented the provisions of article 172 of the Code of Criminal Procedure relating to the rights of the defendant, which states: "In the course of the prosecution, the accused or indicted person's counsel has the right to be present during any criminal proceedings and to submit petitions and file statements. The absence of the defending counsel is no bar to the conduct of the proceedings if it is proved that he had been notified of the date and time for which they were scheduled".

103. The Constitution guarantees: the right to defence (art. 24); the public nature of court sessions (art. 126); the right of Romanian citizens belonging to national minorities, and of persons who do not understand or speak Romanian, to take cognizance of all the case records and documents, to speak in court and to file submissions through an interpreter, and their right to have the interpreter's services free of charge in criminal cases (art. 127).

Paragraph 4

104. In accordance with the provisions of article 14, paragraph 4, of the Covenant, Romanian legislation contains special regulations to establish the criminal responsibility of minors, taking account of their age and the desirability of their undergoing re-education. Thus in its title V, "Minors", the Penal Code establishes the limits of the criminal responsibility of an accused minor, in consideration of his age, the consequences of his being determined criminally responsible, and the educational measures that can be taken in relation to minors. Article 99 of the Penal Code stipulates that a minor less than 14 years old cannot be held criminally responsible, one aged between 14 and 16 years has criminal responsibility only if it is proved that he committed the act with due discernment, and a minor aged 16 years is criminally responsible.

105. Through the adoption of Decree No. 218/1977, the provisions of articles 109 and 110 of the Penal Code specifying the penalties to be imposed on minors have been implicitly abrogated, the penalties being replaced by educative measures. Under the system established by this Decree the general rule is that, if an act coming under the Penal Law is committed by a minor aged from 14 to 18 years, the said minor shall be committed to the care of the community in which he works or studies subject to the observance of strict rules of discipline and behaviour (art. 2). Exceptionally, when minors between 14 and 18 years old have committed acts of extreme gravity, the judicial authority rules that they shall be sent to special occupational and re-educational schools where they will be required to work, to learn a trade and to complete their schooling. This measure is ordered for a duration of two to five years, depending on the gravity of the act, the circumstances in which it was committed and the minor's general behaviour (art. 3).

106. The Code of Criminal Procedure also contains a chapter on the special procedure applicable in cases involving minors (chap. III, arts. 480-493). This chapter provides that the parents and the representatives of the guardianship authority must be present when the case for the prosecution is presented if the minor is less than 16 years old (Code of Criminal Procedure, art. 481). In all cases involving offences committed by minors, an investigation by the social service is mandatory (art. 482); during the proceedings, in addition to the parties, the guardianship authority and the parents are summoned to appear (art. 484); and the session during which the minor is tried is held separately from the other sessions (art. 484). Finally, in accordance with article 171 of the Code of Criminal Procedure, in cases involving minors, legal assistance is mandatory and, therefore, if the person accused or charged has not chosen his defending counsel, the prosecuting body and the judicial authority respectively must undertake to assign him legal assistance.

107. The legal provisions thus in force both in the penal sphere and in that of criminal procedure are in general designed to allow differential treatment of minors who have committed offences with a view to ensuring their reintegration into society. It is not quite correct to consider committal to special occupational and re-educational schools for a period of two to five years as an educative measure and not a punishment, for the minor is deprived of freedom during that time. Nevertheless, the possibility of continuing his schooling there and learning a trade remains an undeniable fact, the intention being of course to ensure the social rehabilitation of such minors. At the same time, the altogether distinct, excessively mild - according to some views - penal treatment accorded to minors is particularly evident if we consider that some of the offences involved are extremely grave. Thus the penalty (or educative measure, to use the current legislative terminology) that a minor is liable to incur does not exceed five years, regardless of the seriousness of the offence committed (for example, an extremely vicious murder). Minors thus have, even in the most serious cases, a chance of social rehabilitation. At the same time, from the viewpoint of the prevention of the phenomenon of criminality, taking into account the specific conditions of deprivation of freedom for minors and of the process of reintegrating them into society, there remains much to be done in the sphere of juvenile crime.

Paragraph 5

108. In accordance with the provisions of this paragraph, any person convicted of an offence has the right to appeal to a higher tribunal (Code of Criminal Procedure, art. 361). The right of the parties concerned to have recourse to legal means for contesting legal decisions is guaranteed by the Constitution (art. 128). The regulations in force provide for a general remedy (appeal), which is decided upon by a higher court, and several special remedies (review, annulment proceedings and special appeal). The draft for the new law on the organization of the courts (approved by the Chamber of Deputies and the Senate on first reading) provides for a return to the three levels of jurisdiction, including the creation of courts of appeal.

Paragraph 6

109. When it is found, after a person has been finally convicted and following a review of the case, that he had not committed the act imputed to him or that the act had not taken place, that person is entitled to compensation for the damage thus sustained on the conditions provided for in the Code of Criminal Procedure (art. 504). The Constitution recognizes the imprescriptible responsibility of the State for damage caused by judicial errors committed in criminal cases (art. 48).

Paragraph 7

110. In accordance with the provisions of paragraph 7, the fundamental principle of force of res judicata is recognized in the Romanian Code of Criminal Procedure, in the following terms: "Criminal proceedings cannot be instituted and, when started, can no longer continue if ... there is force of res judicata. The stay exerts its effects even if the act on which final judgement has been passed was given a different classification at law" (art. 10 (j)).

Article 15

Paragraph 1

111. The principles set forth in article 15, paragraph 1, of the Covenant are established in several articles of the Penal Code:

> "The criminal law does not apply to acts which were not considered as offences at the time they were committed" (art. 11).
>
> "The criminal law does not apply to acts which were committed when the previous law was in force, if they are no longer provided for in the new law" (art. 12).
>
> "If, from the time of commission of the offence until the case is finally settled, one or more criminal laws have been introduced, the more favourable law shall apply" (art. 13). In that connection, the Constitution (art. 15 (2)) states: "The law provides only for the future, unless a more favourable criminal law exists".

Article 16

112. The right of everyone to recognition everywhere as a person before the law is reflected throughout Romanian legislation. In particular, the provisions of the Civil Code protect the rights of the child from the moment of conception, provided that it is born alive (art. 654).

113. In the chapter relating to fundamental rights and freedoms, the Romanian Constitution establishes the right of every individual "to freedom of action, as long as he does not violate the rights or freedoms of others, public order or public morals" (art. 26 (2)).

Article 17

Paragraph 1

114. The rights established in this paragraph are guaranteed by the Constitution, in particular by:

(a) The obligation of the public authorities to respect and protect the home, family life and privacy (art. 26 (1)).

(b) The inviolability of the home: "No one may enter or stay in a person's home or residence without the latter's consent", except in the situations expressly provided for in the Constitution (art. 27);

(c) The guarantee of the confidentiality of correspondence and telephone conversations (art. 28).

115. Legal provisions in this area also existed during the Communist dictatorship. But in the absence of other safeguards, the public authorities exerted strong pressure on and interfered in the privacy and family life of persons who were under suspicion, prosecuted or persecuted for political reasons; and there were violations of the home for the purpose of making unauthorized searches or hiding listening or recording devices, correspondence was opened and censored, and telephone conversations were intercepted.

116. The current legislation seeks to eliminate any violation of those rights. This can be seen in article 27, paragraph 2, of the Constitution, which states:

> "Exceptions to the provisions of paragraph 1 may be allowed according to the law in the following situations: (a) to serve an arrest warrant or execute a court decision; (b) to remove any threat to the life, physical well-being or property of a person; (c) to defend national security or public order; (d) to prevent the spread of an epidemic".

The Constitution further provides that searches may be ordered only by a magistrate, and that night searches are prohibited except in cases of flagrante delicto (art. 27 (3) and (4)).

Paragraph 2

117. Article 17, paragraph 2, of the Constitution establishes the right to protection of the law against any interference with or infringement of, the rights indicated in paragraph 1. In this connection, it should be noted that certain provisions of the Romanian Penal Code make punishable the following acts, which are considered as offences:

(a) Violation of the home (art. 192);

(b) Violation of the confidentiality of correspondence (art. 195);

(c) Disclosure of information about anyone which is in the category of a professional secret (art. 196);

(d) Damage to the honour or reputation of a person through words, gestures or other means (art. 205);

(e) Calumny (art. 206).

Article 18

Paragraph 1

118. This paragraph establishes the right of everyone to freedom of thought, conscience and religion. In Romania, the communist regime did not include freedom of thought in the Constitution. On the contrary, freedom of conscience and freedom of expression were recognized or, to be more precise, were proclaimed. Nevertheless, in 1948, the Greek-Catholic Church was banned, even though a significant proportion of the Romanian population belonged to it, and that Church, its leaders and members from Transylvania had played an important role in the establishment of the unitary Romanian State on 1 December 1918.

119. After the Revolution, Decree-Law No. 9 of 31 December 1989 restored the legal situation of the Greek-Catholic Church and Decree-Law No. 126 of 24 April 1990 recognized the right of the Romanian Church United with Rome (Greek-Catholic) to the property it had previously owned. In practice, however, the return of this property is posing many problems, on account of both the places of worship used by members of the Orthodox Church, and also the existence of charitable institutions, hospitals, almshouses, etc. Given this situation, the return of property is proceeding in stages and will be a long and delicate process.

120. The recently adopted Constitution guarantees "freedom of thought and opinion, and freedom of religion"; it provides that these freedoms "may not be restricted in any way" (art. 29 (1)). All the religious denominations recognized by the Romanian State are guaranteed the freedom to express themselves individually or in groups, in public or in private, through religious worship, rites or specific teaching. Today, 15 recognized denominations are active in Romania. In addition, there are over 50 religious associations, which are independent or have been constituted within the framework of various denominations, and have recently been legalized. In 1990, work began on 300 new places of worship, with considerable financial support from the State. Work has also started on the conservation and restoration of some of the most important ecclesiastical buildings, which form part of the national cultural heritage, and the State has also contributed funds for this purpose.

121. The religious denominations are free and organize themselves according to their own statutes and in keeping with the law. They are autonomous of the Government and enjoy its support, which includes facilitating a religious presence in the army and in hospitals, prisons, asylums and orphanages (Constitution, art. 29 (3) and (5)).

122. The situation over the past two years shows that these provisions have been respected. Thus, apart from the theological training institutes and seminaries of the (already existing) Orthodox, Evangelical and Reformed Churches, the following institutions have been set up: the Bible Institute in Oradea (January 1991); the Roman Catholic Theological Institute, (university level) in Bucharest, which has faculties for the training of clergymen, and specialists in teaching and social welfare (July 1991); the First of December University in Alba-Iulia, which includes a Faculty of Greek-Catholic Theology (with effect from the 1991/1992 university year). At its request, from 1990, the Orthodox Theological Institute has been functioning as a part of the University of Bucharest. The religious denominations in Romania have numerous periodicals, many of which are printed in the languages of the religious minorities. These include: Reformatus Szemle and Kereszteny Magveto (in Hungarian); Kirchliche Blöter (in German); the newsletter of the Serbian Orthodox Vicariate (in Serbian); a Mosaic periodical (published in four languages: Romanian, Hebrew, German and English).

123. In order to assist the various religious denominations, the State has adopted a number of measures, such as exemption from tax on the products and the services of the units belonging to the religious denominations which are necessary for their activities (candles, icons, sacred and religious objects, bells, clerical dress, books of rites, publications, etc.); the State has also facilitated the allocation of land for the construction of buildings for worship, and the supply of printing presses with paper.

Paragraph 2

124. The provisions of this paragraph are the same as those of article 29, paragraph 1, of the Constitution, which reads: "No one may be forced to adopt an opinion or espouse a religious belief contrary to his convictions".

Paragraph 3

125. As to the possibility of laying down certain restrictions, it is noteworthy that the Constitution prohibits the religious denominations, in their relations, from engaging in "all forms, means, acts or actions of religious discord" (art. 29 (4)). Freedom of conscience "shall be expressed in a spirit of tolerance and mutual respect" (art. 29 (2)).

126. There is no other specific restriction in this area. The State may nevertheless avail itself of its right to prohibit any practices, acts or actions which endanger national security, public order, health or morals, or the rights and freedoms of citizens (Constitution, art. 49, referred to earlier).

Paragraph 4

127. The commitment undertaken by the Romanian State pursuant to the provisions of this paragraph did not become a constitutional provision until after the Revolution. Thus, the Romanian Constitution states: "Parents or guardians have the right to ensure, in accordance with their own convictions,

the education of minor children for whom they are responsible" (art. 29, para. 6). This provision forms part of the article which establishes and guarantees freedom of thought, opinion and religion.

Article 19

Paragraph 1

128. The right to hold opinions and the right to freedom of expression established in the International Covenant on Civil and Political Rights were also laid down in the previous Constitution, which "guaranteed" for the citizens of the country "freedom of expression, freedom of the press, and freedom of assembly, meetings and demonstrations". Nevertheless, thousands were made to suffer for their political opinions, imprisoned, subjected to forced labour, confined in neuro-psychiatric hospitals, tortured and killed during the 45 years of the Communist regime.

129. Since the Revolution, those persons who had been persecuted for their opinions have received compensation in the form of a monthly indemnity, and their years of detention, confinement or deportation have been taken into consideration for the purposes of the determination of pension rights. The right to compensation was established by Decree-Law No. 118 of 9 April 1990.

130. Pursuant to article 19, paragraph 1, of the Covenant, according to which "Everyone shall have the right to hold opinions without interference", Decree-Law No. 1 of 27 December 1989 and Decree-Law No. 12 of 10 January 1990 repealed the provisions of the Penal Code which classified as political offences "propaganda against the socialist regime" (art. 166 (2)), "defamation of a State or collective organization" (art. 257) and political "sabotage" (art. 164).

Paragraph 2

131. In accordance with the right to freedom of expression recognized by the Covenant, the Romanian Constitution states: "the freedom to express ideas, opinions and beliefs and the freedom to create works of all kinds, orally, in writing, by means of sound or pictures or by other means of communication, are inviolable ... Censorship of any kind is prohibited" (art. 30 (1) and (2)).

132. Referring specifically to freedom of the press, the Constitution states: "Freedom of the press implies the freedom to publish. No publication may be banned. The law may compel the organs of the mass media to make public their sources of financing." (art. 30 (3), (4) and (5). The existence in Romania today of over 1,500 newspapers and periodicals, compared with only 100 publications under the communist regime, which operated on the basis of individual approval, is the practical result of the application of the right to freedom of opinion and expression. The very strict censorship which existed under the former regime has been lifted.

133. The 1991 Constitution guarantees not only freedom of expression, but also the right to information. It states: "The citizens' right of access to any public information may not be curtailed ... In accordance with their

competence, the public authorities are required to ensure that citizens receive accurate information concerning public affairs and matters of personal interest" (art. 31 (1) and (2)).

134. Regarding the right to receive information from the press, the Constitution also stipulates: "The public and private organs of the media are required to ensure that the public receives accurate information" (art. 31 (4)). "Civil liability for the information or work made public shall be borne by the organizer of the cultural event, publisher or producer, the author or the owner of the means of reproduction or the radio or television station, in accordance with the law. Press offences shall be specified by the law" (art. 30 (8)).

Paragraph 3

135. According to the terms of this paragraph, the exercise of freedom of expression entails obligations and responsibilities. It may therefore be made subject to a number of essential restrictions, specifically provided for by law. To that end, the Romanian Constitution provides: "Freedom of expression may not be used to the detriment of the dignity, honour or privacy of the individual or his right to his own image" (art. 30 (6)). "The law prohibits defamation of the country and the nation, incitement to a war of aggression, to national, race, class or religious hatred, and to discrimination, territorial separatism or public violence, and obscene acts contrary to public morals" (art. 30 (7)).

Article 20

Paragraph 1

136. In accordance with this paragraph, the Romanian Penal Code makes punishable the act of engaging in propaganda for war, whether such an act is committed by the dissemination of news or by any other kind of expression aimed at unleashing a war, whether oral, in writing or by radio, television or the cinema (art. 356).

Paragraph 2

137. The prohibitions contained in paragraph 2 regarding incitement to national, racial or religious hatred are repeated in article 30, paragraph 7, of the Constitution, which stipulates that any incitement to national, racial, class or religious hatred or to discrimination is prohibited by law.

Article 21

138. The right of peaceful assembly, together with the legal restrictions referred to in this article of the Covenant, were also provided for in the old Constitution, which in fact expressed them in typical language, prohibiting the exercise of freedom of assembly for purposes contrary to "the socialist system and the interests of the workers". This led, in practice, to limitation of the exercise of this right exclusively to meetings organized by the authorities.

139. In the recent legislation, specifically Decree-Law No. 2 and Decree-Law No. 39 of January 1990, the measures concerning the organization and conduct of public functions provide the legal framework for the exercise of the right of assembly, in keeping with democratic principles, the requirements of public order and the protection of public morals and civil rights and freedoms.

140. Freedom of assembly is clearly guaranteed by the Constitution: "Meetings, demonstrations, parades or any other form of assembly shall be free; they shall be organized and conducted in a peaceful manner, without any kind of weapon" (art. 36). Unfortunately, some public assemblies have ceased to be peaceful or have been held in breach of the law, with the sometimes unfortunate intervention of the forces of law and order, leading to tragic events such as those which occurred in June 1990 or September 1991. In spite of the efforts made in this regard (including the work of a number of parliamentary commissions specially established for the purpose), the events referred to have not been fully cleared up nor has the responsibility of the persons who perpetrated them been established so far.

Article 22

Paragraph 1

141. The right to freedom of association, including the right to form a trade union, was provided for in the old Constitution of 1965. Up to 1990, the trade unions were characterized by their official role as the Communist party's "driving belt" in mobilizing the entire population in "the struggle to accomplish the work of socialism".

142. Under Decree-Law No. 8 of 31 December 1989, which, since the Revolution, has fully guaranteed freedom of association, hundreds of free trade unions and trade union federations and confederations have been formed in Romania and played an active part in defining the new economic wage liberalization structures, and in formulating the regulations relating to the right to strike, and the right to unemployment benefits and other social welfare benefits.

Paragraph 2

143. In granting citizens the right "to associate freely in political parties, trade unions and other forms of association", the 1991 Constitution lays down certain restrictions, which are necessary in any democratic society. Thus, in conformity with the provisions of the Covenant, "Any parties or organizations which, through their objectives or activities, militate against political pluralism, against the principles of the State governed by the rule of law, or against the sovereignty, integrity or independence of the State are unconstitutional ... Secret associations are prohibited" (art. 37 (1), (2) and (4)).

144. Given that the Covenant provides for the possibility of restricting the exercise of this right, in particular for certain categories of professions, the Constitution stipulates: "Judges of the Constitutional Court, ombudsmen,

magistrates, active members of the armed forces, policemen and other categories of public employees stipulated by statutory law may not be members of political parties" (art. 37 (3)).

Article 23

Paragraph 1

145. Up to 1954, the provisions concerning marriage and protection of the family were contained in the Civil Code. In 1954, the relevant regulations underwent far-reaching amendments and were supplemented by a new Code adopted in the same year. Simultaneously with the entry into force of the Family Code, the provisions of the Civil Code were repealed (except for article 134, to which reference will be made in the comments on the right to marry and found a family).

146. The Romanian Constitution also establishes the principles which form the basis of the family and marriage: "The family is based upon a marriage freely consented to by the spouses, upon their equality, and upon the right and the duty of the parents to ensure the development, education and upbringing of the children. The conditions under which marriages are entered into, dissolved and annulled are established by law. A religious marriage ceremony may be celebrated only after the civil ceremony. Children born out of wedlock are equal before the law to those born in wedlock" (art. 44).

Paragraph 2

147. The right to marry and found a family is recognized for both men and women of marriageable age, namely, 18 years for men and 16 years for women. Nevertheless, if there are reasons to justify it, the marriage of a woman aged 15 years is also allowed. Authorization for entering into such a marriage is granted by the prefecture of the department in which the woman is domiciled and may be granted only pursuant to an opinion given by an official doctor (Family Code, art. 4).

148. The following are prohibited: marriage between a man and woman who are already married; marriage between direct relatives or between collateral relatives up to and including the fourth degree of consanguinity; marriage between an adoptive parent or his ascendants, on the one hand, and an adopted child or his descendants, on the other; marriage between the children of an adoptive parent and an adopted child or his children; marriage between persons who have been adopted by the same person; marriage between a guardian and a minor who is under his guardianship. If there are reasons to justify it, the marriage may be authorized between collateral relatives of the fourth degree of consanguinity, between the child of an adoptive parent and an adopted child or his child, and between persons who have been adopted by the same person (Family Code, arts. 5, 6, 7 and 8).

Paragraph 3

149. In accordance with this paragraph of article 23 of the Covenant, no marriage may be entered into without the freely expressed consent of the future spouses. To this end, Romanian law provides that "The family is based

upon a marriage which is freely consented to by the spouses" (Family Code, art. 1, para. 3). "Any persons wishing to enter into a marriage shall make a declaration of marriage in person at the branch of the civil registry at which the marriage is to be solemnized" (Family Code, art. 12). "A marriage shall be entered into through the consent of the future spouses. They shall appear together, before the representative of the civil registry ... in order to give their personal and public consent" (Family Code, art. 16).

150. If a marriage is entered into in the absence of sound judgement on the part of the spouses, the nature of the consent is invalidated. Consequently, "it is forbidden for an insane person, a mentally deficient person or a person who is temporarily deprived of his faculties, for as long as he is unaware of his acts, to marry" (Family Code, art. 9).

151. None of the provisions referred to is discriminatory in nature. As was pointed out earlier, upon the entry into force of the Family Code the only provision in the Civil Code concerning marriage which remained in force was that contained in article 134. This exception was not due to a random omission, but rather to the determination that the Family Code should not contain a discriminatory provision which would render the marriage of a Romanian citizen and a foreign citizen subject to the authorization of the President of the Republic. It is well known that such authorization would involve a very long delay (a wait of months or even years). For these reasons, together with many other anti-democratic restrictions on human rights that had been imposed by the communist regime, article 134 of the Civil Code was repealed by Decree-Law No. 9 of 31 December 1989.

Paragraph 4

152. In accordance with this paragraph, the Family Code provides: "In relations between the spouses and in the exercise of rights with regard to the children, men and women shall have equal rights" (art. 1 (4)). "Family relations shall be based on friendship and mutual affection between members, who shall give each other mutual moral and material support" (art. 2). "Men and women have equal rights and obligations in marriage" and "take decisions jointly on all matters concerning the marriage" (arts. 25 and 26). "The spouses have an obligation to contribute, according to the means of each, to the expenses of the marriage" and "the property acquired during the marriage, by one or other of the spouses, shall, from the time of its acquisition, be the common property of the spouses" (arts. 29 and 30).

153. The same principle of the equality of the rights and responsibilities of the spouses constitutes the basis of the regulations concerning the dissolution of the marriage by divorce: the guarantee of a right of maintenance for the spouse who is in need - either the man or the woman; the custody and maintenance of under-age children; the partition of common property; and the maintenance of the name borne during the marriage (Family Code, arts. 38, 41, 42, 43, 44, 36 and 40).

Article 24

Paragraph 1

154. The provisions of the Family Code do not permit any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth in respect of the right of the child to enjoy such measures of protection as are required by his status as a minor on the part of his family, society and the State. If the child is an orphan or for good reason is not in the custody of either of his parents (because they have forfeited their parental rights or are separated or divorced), the child's protection must be assured by entrusting him to a person or institution affording protection.

155. However, owing to the continued decline in economic activity over the past decade and the precariousness of material living conditions in families with several children, and also due to the fact that, because of the prohibition of abortion, many single women have had undesired children, Romania has inherited from the former regime a dramatic situation with thousands of children abandoned, disabled, maladjusted or orphaned. The true extent of this problem has been made public only since the Revolution. Thanks to the support of certain international organizations and associations or persons abroad who have provided assistance to Romanian children, and also as a result of the increasing concern shown by the national and local authorities, there has been a marked improvement in conditions of protection and medical assistance for children, especially in communities with newborn and orphaned children.

156. Legislative measures adopted since the Revolution include the repeal both of the decree prohibiting termination of pregnancy and of articles 185 to 188 of the Penal Code, which had set a penalty of up to five years' imprisonment for illegal abortion, failure to report abortions carried out in emergency cases and even possession of instruments or materials with which to practise abortion (Decree-Law No. 9 of 31 December 1989). In addition, several government institutions or bodies, such as the State Secretariat for Disabled Persons (which administers regional inspection bureaux), the National Institute for Rehabilitation and Special Education of Disabled Persons, the Committee for Assistance to Child Welfare Institutions and the Romanian Committee for Adoption, have recently been established.

157. Act No. 11 of 1 August 1990 contains new provisions relating to adoption. In the past, adoption had been a matter to be decided by the administrative bodies and, in the case of international adoption, prior authorization had been required from the President of the Republic. By Act No. 11/1990, the power to authorize adoption, including international adoption, was vested in the judicial bodies. The number of adoptions actually authorized as being in the interests of the child has increased considerably. However, the freedom granted in this regard has also had an unforeseeable adverse effect, namely, the emergence of a complex network of intermediaries and even child traffickers. In 1991, the Act was amended to allow international adoption only in the case of children placed in welfare institutions and under the supervision of the Romanian Committee for Adoption; a certain preference has been given to nationals wishing to adopt, this being done in the interests of the child concerned.

158. Ratification of the Convention on the Rights of the Child, on 27 September 1990, has had a positive effect on the activities of the authorities and non-governmental organizations in Romania. The provisions of the Convention are reflected in the Romanian Constitution, which guarantees the rights of the child on the basis of the equality of all citizens without privilege or discrimination (art. 16). Furthermore, the Constitution expressly provides that children are equal before the law, whether born in or out of wedlock (art. 44 (3)). In the exercise of their rights, children enjoy special protection and assistance (art. 45 (1)).

159. The right to instruction is ensured through compulsory general education, secondary education, and vocational and higher education. As required by law, education is provided by the State free of charge. And since 1990, a number of private educational institutions have been established. The Constitution guarantees children belonging to national minorities the right to learn and receive instruction in their mother tongue (art. 32 (3)). Freedom of religious education, according to the individual needs of each denomination, and the teaching of religion in State schools as an optional discipline are likewise guaranteed (art. 32 (7)).

160. As part of its obligations in this respect, "the State shall grant family allowances for children and financial support for the treatment of a sick or disabled child". The public authorities are required to contribute to the establishment of conditions for the free participation of young people in the country's political, social, economic, cultural and sporting life (Constitution, art. 45 (2) and (5)).

161. The right to social welfare also includes the protection of young people through adequate labour regulations, as provided for by the Constitution (art. 38 (2)). "Minors shall not be exploited or employed in work which may be detrimental to their health or morals or endanger their lives or normal development" (art. 45 (3)). "Minors under 15 years of age shall not be engaged for remunerated employment" (art. 45 (4)). Protection of gainfully employed minors, working hours and additional leave entitlements are regulated by the Labour Code.

Paragraph 2

162. In accordance with the requirements of this paragraph, Romanian legislation provides that the birth of every child shall be registered within 15 days, except in the case of a stillborn child, where the time-limit is 24 hours (Decree No. 278 (1960) on the registration of births, marriages and deaths, art. 15). The birth must be declared by the two parents or, if the parents cannot do so, by the clinic or hospital service in which the birth occurred or by the doctor, nurse or other persons present at the birth, by relatives or by neighbours. A foundling must be registered within three days (from the date on which he was found), on the basis of the declaration made by the person who found the child, or by the welfare institution or person to whom the child was entrusted (ibid., arts. 16 and 17).

163. Every person has the right to a name. This name shall include the surname and the given name (Decree No. 31/54 relating to natural and legal persons, art. 12). The surname is acquired through filiation and the given

name is established on the date of registration of the birth, on the basis of the statement made by the person declaring the birth. In the case of a foundling of unknown parentage, the surname and given name are established by a decision of the mayor's office of the locality in which the child was found (Decree No. 975/1968 relating to names, art. 2).

164. A child born in wedlock takes the common surname of the parents. If the parents do not have a common surname, the child will take the name of one of the parents or their two names combined, depending on the parents' wishes (Family Code, art. 62). Where a child is born following the dissolution of a marriage (through decease or divorce) or following the annulment of a marriage, the father is the mother's former spouse if the child was conceived during the marriage and was born before the mother entered into a new marriage. In such cases, the mother's current spouse may claim paternity of the child within six months from the date of the child's birth (ibid., arts. 53 (2), 54 and 55). A child born out of wedlock acquires the name of the parent in respect of whom filiation was first established. If, afterwards filiation is also established in respect of the other parent, the court may allow the child to take the latter parent's name (ibid., art. 64).

165. Maternal filiation derives from the fact of giving birth. It may also be established by later recognition on the part of the mother or by judicial decision (Family Code, arts. 47, 48 and 52). Paternal filiation derives from the marriage of the mother and, unless evidence is produced to the contrary (in proceedings where paternity is contested), the father of a child born in wedlock is the mother's spouse (ibid., art. 53 (1)). Paternal filiation of a child conceived and born out of wedlock may be established by voluntary recognition of paternity or by judicial decision (ibid., arts. 56, 57, 59 and 60).

Paragraph 3

166. Article 24, paragraph 3, of the Covenant recognizes the right of every child to acquire a nationality. The Romanian Citizenship Act was passed in 1991 (Act No. 21 of 1 March 1991). It amended several of the provisions of the former Act (of 1971) and includes new legislative measures on repatriation of Romanian citizens (Decree-Law No. 7/1989) and recovery of Romanian citizenship (Decree-Law No. 137/1990), which were adopted after the Revolution. Under Act No. 21 of 1 March 1991, Romanian citizenship is acquired by birth, adoption or repatriation or may be granted on application (art. 4). Romanian citizenship may be acquired by birth, for children born in Romanian territory or abroad, when one or both parents have Romanian citizenship. A child found in Romanian territory is deemed to be a Romanian citizen if neither of his parents is known (art. 5).

167. An alien or stateless person below the age of 18 acquires Romanian citizenship if the adoptive parents are Romanian citizens or if the adoption is made by only one person who is a Romanian citizen. If only one of the adoptive parents is a Romanian citizen, the citizenship of the adopted minor will be decided in the light of the child's interests and his consent if he has reached 14 years of age, either by the adoptive parents, by mutual agreement or by the court.

168. If the parents reacquire Romanian citizenship following repatriation, they will decide on the citizenship of any of their children who are minors but, if they cannot reach agreement, this decision will be taken by the court having jurisdiction in the minor's place of residence (art. 8).

169. Under-age children of aliens or stateless persons who have been granted Romanian citizenship acquire such citizenship at the same time as their parents. If only one parent acquires Romanian citizenship, the two parents shall decide together on the question of the child's citizenship; if they cannot reach agreement, the decision will be taken by the court which has jurisdiction in the minor's place of residence, in the light of his interests, and his consent if he has reached 14 years of age (art. 10). Loss of citizenship by either parent has no effect on the child's citizenship (Act No. 21 of 1 March 1991, art. 26).

Article 25

170. The political rights recognized by the International Covenant are reflected in the Constitution:

(a) The right to take part in the conduct of public affairs, directly or through chosen representatives (art. 35);

(b) The right to vote and to be elected at genuine periodic elections, by universal and equal suffrage and by secret ballot, guaranteeing the free expression of the will of the electors (arts. 34, 59 (1), 81 and 120 (1));

(c) The right to have access, on general terms of equality, to public service without distinction as to nationality, race, sex or religion (art. 16).

171. These rights were also recognized by the previous Constitution but their actual implementation was marked by the procedure of designation of candidates, the previous Constitution providing that the right to designate candidates lay with a single body, under the direct control of the Romanian Communist Party.

172. The organization of free elections, denied to the Romanian people for decades, required the adoption of a new electoral law after the Revolution. Decree-Law No. 92 of 14 March 1990 provided a legal framework specifically designed for a democratic, multi-party system, allowing candidates to be put forward by political parties or groups, non-political organizations and independent persons. The vote of 20 May 1990 permitted the election of the President of the Republic and the Parliament (made up of two chambers), which also functioned as a Constituent Assembly until the adoption of the Romanian Constitution, which came into force on 8 December 1991.

173. Under the Constitution, citizens have the right to vote provided that they have reached the age of 18 by the date of the election. Mentally retarded or insane persons placed under interdiction and persons sentenced by a final court decision to loss of electoral rights are not entitled to vote (art. 34). Citizens entitled to vote and meeting the requirements for holding public office have the right to be elected provided that they have

only Romanian citizenship and are resident in the country. Persons who are prohibited from joining political parties, namely, judges of the Constitutional Court, ombudsmen, magistrates, active members of the armed forces, police officers and other categories of public officials as defined by an organizational law do not have the right to stand for election (arts. 16 (3), 35 (1) and 37 (3)). Candidates must have reached 23 years of age by the time of the elections to be elected to the Chamber of Deputies or local bodies, and 35 years of age to be elected to the Senate or to the office of President of the Republic (art. 35 (2)).

174. The number of deputies and senators is set by the electoral law in proportion to the country's population. Deputies and senators are elected by universal and equal suffrage and by direct and secret ballot on the basis of free expression from the lists of candidates registered by political parties and groups, non-political organizations and independent persons. Organizations of citizens belonging to national minorities which do not obtain the required number of votes in the elections to be represented in Parliament each have the right to one parliamentary seat under the terms of the electoral law. Citizens belonging to a national minority may be represented by only one organization (art. 59).

175. The President of Romania is elected by universal and equal suffrage and by direct and secret ballot on the basis of free expression. No one may be elected President of the Republic for more than two terms of office. Such terms of office may also be successive (art. 81 (1) and (4)); each term of office lasts four years. While in office, the President of Romania may not be a member of any party and may not perform any other public or private function (arts. 83 (1) and 84 (1)).

176. The local government authorities comprise local councils and mayors elected on the basis of direct suffrage by the population having the right to vote in the commune or town concerned. The activities of communal and urban councils are coordinated by a departmental council, elected indirectly by the communal and urban councillors (arts. 120 and 121).

177. After more than 45 years of elections controlled by the communist regime, the first free elections of councillors and mayors in communes and towns were held in February 1992, in accordance with the Local Government Act (No. 69 of 26 November 1991) and the Organization of Local Elections Act (No. 70 of 28 November 1991).

Article 26

178. When referring to articles 2, 14, 24 and 25 of the Covenant, we indicated that the equality of citizens before the law and the public authorities, without privilege or discrimination, is guaranteed by article 16, paragraph 1, of the Constitution. The express provision in the same article that "no one is above the law" (para. 2) relates both to the obligation to respect the law and to responsibility for failure to respect the law.

179. The Constitution nevertheless requires each citizen to exercise his constitutional rights and freedoms in good faith without infringing the rights

and freedoms of others (art. 54). Every person is entitled to a legal remedy to protect his rights, freedoms and legitimate interests. "No law may limit the exercise of this right" (art. 21).

180. The criminal law establishes penalties for: any infringement of a person's right to life or physical or mental integrity; deprivation of liberty except in cases and in accordance with procedures provided for by law; violation of the home, confidentiality of correspondence and telephone communications; and infringement of a person's dignity and honour. The Penal Code also contains penalties for nationalist or chauvinistic propaganda (art. 317); propaganda for war (art. 356); and impeding the free practice of a religion which is organized and conducted in accordance with the law (art. 318).

Article 27

181. As required by this article, the Constitution and Romanian legislation in general guarantee to members of the various ethnic, religious or linguistic minorities the right, in community with the other members of their group, to enjoy their own culture, use their own language, and profess and practise their own religion. The State recognizes and guarantees members of the national minorities "the right to preserve, develop and express their ethnic, cultural, linguistic and religious identity" (Constitution, art. 6 (1)). The measures of protection adopted by the State to preserve, develop and express the identity of members of the national minorities must be in conformity with the principles of equality and non-discrimination vis-à-vis other Romanian citizens (ibid., art. 6 (2)).

182. Freedom of association is granted to all citizens, regardless of their nationality. The political groups and other non-political organizations of national minorities took part, on the basis of their own lists of candidates, in the general election of May 1990 and the local elections of February 1992. The Democratic Union of Hungarians in Romania is represented in Parliament by 29 deputies and 12 senators who, in the two chambers, make up the largest parliamentary group after the National Salvation Front. Likewise, by virtue of the electoral law passed in March 1990, the organizations of other national minorities - Serbian, Bulgarian, Armenian, Ukrainian, Slovak, Greek - which have not obtained the required number of votes to hold seats in Parliament have each been allowed to designate one representative in the Chamber of Deputies. This right is guaranteed by the Constitution (art. 59 (2)).

183. With regard to education, it should be pointed out that during the school year 1991/1992, instruction was provided in Hungarian at the primary, secondary, vocational and post-secondary level in 2,428 units and sections (in which 222,826 children of Hungarian origin are studying). Compared with the school year 1989/1990, when there were only 107 senior secondary school sections in which the Hungarian language was used, in 1991/1992 the number of such secondary schools increased to 135, of which 33 are schools in which only Hungarian is used. Furthermore, at the university level, students belonging to the Hungarian minority may study certain subjects in their mother tongue at Babeş-Bolyai University in Cluj-Napoca and at the Institute of Medicine and

Pharmacology and the Szentgyörgyi Istvan Drama Institute, both in Tirgu-Mureş. At the Babeş-Bolyai University in Cluj-Napoca, there are 1,570 students of Hungarian ethnic origin, 581 of them studying in their mother tongue at their own request: 118 in the Faculty of Mathematics, 79 in the Faculty of Physics, 133 in the Faculty of Chemistry and Industrial Chemistry, 36 in the Faculty of Biology, Geography and Geology, 54 in the Faculty of History and Philosophy, and 161 in the Faculty of Letters. A total of 197 subjects are studied in Hungarian in these faculties. Likewise, there are schools and sections at all levels in which the languages of other minorities are the medium of instruction.

184. Religious education has also been widely developed: for Roman Catholics there are six institutions of higher education and four high-school seminaries; for Protestants, three institutions of higher education and two high-school seminaries; for the Baptist denomination, two newly-established theological colleges and four high-school seminaries; for the Pentecostalists, two post-secondary seminaries; for the Seventh Day Adventists, one high-school seminary; and for the Christian Gospel denomination, one high-school seminary. Furthermore, a government decision authorized the establishment this autumn of a Seventh Day Adventist Institute and a Pentecostalist Institute, both at the university level.

185. With regard to culture, it may be noted that cultural and artistic institutions for members of national minorities are financed by the State. In the Ministry of Culture, there is a Department for Culture created specially for members of the national minorities; its activities are coordinated by a Secretary of State who is himself a member of a national minority.

(a) Theatres: 10 Hungarian-language State theatres and sections, two German-language State theatres and one Yiddish theatre;

(b) Press: more than 90 central and local publications in Hungarian, as well as central and local publications in German, Turkish, Romany, Slovak and Czech, Serbian, Armenian, Bulgarian, Ukrainian and Russo-Lipovan;

(c) Radio and television: broadcasts twice a week on the national television channels in Hungarian, German and other languages; daily broadcasts on national radio in Hungarian and German, and weekly broadcasts for other languages; and numerous broadcasts by regional television and local radio stations in the languages of the minorities;

(d) Books: the Kriterion publishing house in Romania specializes in books and magazines for persons belonging to the minorities, most contributors writing in their mother tongue; it also publishes translations in Romanian (of works of authors belonging to the national minorities or of Romanian or foreign authors referring to the minorities of Romania).

186. The religious minorities (Romanian or other nationalities) have their own churches - Roman Catholic, Uniaet, Protestant, Evangelical and Armenian - and there are also Mosaic Law and Sephardic synagogues, Islamic mosques, and places of worship for other denominations recognized by law in Romania. The State guarantees freedom of religious education, in accordance with the individual needs of each denomination (art. 32 (7)). This can be seen from

the institutions of higher education founded since the Revolution: the Bible Institute in Oradea, the Roman Catholic Theological Institute in Bucharest and the Faculty of Theology at Alba-Iulia University. In State schools, religious education is guaranteed by the law and provided in accordance with the pupils' wishes and religious faith.

187. Guaranteeing the financial and material resources needed for the development of the ethnic, cultural, linguistic and religious identity of national minorities is certainly essential. However, this is a difficult problem and requires time. Impatience and occasionally some abuses, even in the separation of schools teaching in Hungarian or sole use of the mother tongue to the exclusion of the official language, in areas with a large Hungarian population (where the Romanian population feels frustrated and challenged), have led to inter-ethnic tension and conflict, especially in the first part of 1990. These events, together with the development of inter-ethnic relations in the course of 1991, show that the violence and excesses were caused by extremist elements and attitudes on both sides, since the great majority of the inhabitants of Transylvania maintain good relations and a normal way of life, with Romanian or Hungarian nationality playing no part in that problem. Furthermore, such problems have not arisen in relations with members of other minorities.

188. The difficulties of integrating the Romany people, in keeping with the requirements of schooling, education and observance of the law, and also the erroneous interpretation of rights and freedoms, in the context of the elimination of restrictions imposed by the communist regime, have led to an increase in the number of offences committed by members of that community. This furthermore explains why the people of some villages, indignant at the behaviour of the Romany people and the crimes committed by some of them, destroyed their homes and drove them out of the areas concerned. Of course, intervention by the authorities stopped these actions and those guilty have in large part been penalized. Moreover, the Romany organizations have played an important role in preventing conflicts of this kind; the fact that they have put forward several candidates in local elections and that Romany representatives have been elected as local councillors, holds out hope that the causes of these conflicts will be considerably reduced in the future.

189. The problems relating to the German minority are very different in nature. The waves of emigration in 1990 and 1991 called for a sustained effort by the Romanian State to protect and help persons of German origin remaining in Romania, especially to ensure their ethnic, cultural, linguistic and religious identity (there are regions in which the Evangelical Church and German-language schools are threatened because of the lack of priests and teachers and pupils). With this in mind, the Romanian State has recently concluded agreements with Germany in order to protect the members of the German community and materially assist them to remain in Romania on a stable basis and, where possible, encourage the return of those who have left.

190. The decreasing number of Jews - the result of emigration over the past few decades - and the ageing of the Jewish community in Romania likewise makes it necessary for the Romanian State to take measures to help that minority. Other much smaller national minorities, such as the Armenians, Serbs,

Ukrainians and Poles, also have their specific problems. None of these minorities may be deprived of the support necessary in order to exercise their rights and develop their ethnic, cultural, linguistic and religious identity. Recognition of their rights is the first and most important step in this regard. The elimination of all privileged treatment or discrimination is the second step.

191. In the final analysis, it is the development of economic and financial resources that will serve to improve conditions for the protection and promotion of human rights in Romania. Despite sacrifice and privation, the people have regained their freedom and the right to enjoy it on the basis of equal opportunities for all.